

CERTIFIED TRUE COPY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
MITCHELL L. ELIAS, D.D.S.	:	ORDER ENTERING DEFAULT
	:	And
TO PRACTICE DENTISTRY IN THE	:	IMPOSING SANCTIONS
STATE OF NEW JERSEY	:	

THIS MATTER was opened to the New Jersey State Board of Dentistry by the Administrative Complaint of Peter Verniero, Attorney General of New Jersey, by Rochelle B. Smith, Deputy Attorney General, against respondent Mitchell L. Elias, D.D.S. (hereinafter the "respondent"). The Complaint filed on May 2, 1997 alleged in two counts that respondent failed to comply with a duly issued administrative subpoena duces tecum in violation of the duty established by N.J.A.C. 13:45C-1.2, N.J.A.C. 13:45C-1.3(a)1, 2, 4 and 6, which failure constitutes professional misconduct in violation of N.J.S.A. 45:1-21(h); and failed to obtain a certificate of registration for the biennial period commencing November 1, 1995 in violation of N.J.S.A. 45:6-10 and N.J.S.A. 45:1-7. Respondent neither filed an Answer to the Complaint nor entered a plea to the charges in the Complaint.

A hearing in this matter was held on May 21, 1997. Deputy Attorney General Rochelle B. Smith appeared on behalf of the complainant. Respondent did not appear. The following exhibits were entered into evidence:

- S-1 Certificate of Service dated May 14, 1997, and signed by Robert J. Lafferty, Investigator, Division of Consumer Affairs, Enforcement Bureau, attesting that the Order to Show Cause and Verified Complaint were personally served on respondent Mitchell L. Elias, D.D.S.
- S-2 Copy of Administrative Subpoena Duces Tecum dated March 20, 1997 signed by Marilyn A. Bair, D.A.G., and addressed to Dr. Mitchell Elias directing the production of dental records for patients J.R. and E.Y.

The Deputy Attorney General also presented the testimony of two witnesses:

Jack C. Lefaucher, Supervising Investigator, Division of Consumer Affairs, Enforcement Bureau and Agnes M. Clarke, Executive Director, State Board of Dentistry. Supervising Investigator Jack Lefaucher testified that he is the supervisor in charge of Investigator Robert Lafferty. Mr. Lefaucher testified regarding the service of documents upon respondent in this case. Mr. Lefaucher stated under oath that on March 24, 1997 an administrative subpoena duces tecum was personally served upon respondent by Investigator Lafferty. The subpoena demanded production of dental records for patients J.R. and E.Y.¹ Mr. Lefaucher testified that respondent failed to comply with the terms of the subpoena. Mr. Lefaucher further testified that on or about May 12, 1997, respondent was served by Investigator Lafferty with a copy of the Order to Show and Administrative Complaint. According to Mr. Lefaucher, an additional set of moving papers was again personally served upon respondent the evening of May 20, 1997, as Page 2 of the Administrative Complaint was missing from the original set of papers served upon respondent on May 12, 1997.

Agnes M. Clarke, Executive Director for the State Board of Dentistry, testified that she is the custodian of the records of the Board. As such, she testified that respondent is a licensee

¹The Board sua sponte without objection from the Attorney General directed that all references to the patients' identities be deleted from any public dissemination of transcripts or evidence in this manner. All references to patients shall be by the use of initials.

of the Board holding license number DI009682. Ms. Clarke also testified that respondent's license to practice dentistry expired on October 31, 1995 and respondent failed to renew his certificate of registration for the biennial period of 1995 - 1997. Ms. Clarke testified that to date the patient records of J.R. and E.Y. have not been received in the Board office. Additionally, Ms. Clarke testified that no Answer was filed with the Board office.

The Board conducted its deliberations in Executive Session on May 21, 1997 and announced its decision in Public Session on that same date. This Order memorializes the Board's decision announced in public session on May 21, 1997.

In consideration of the record herein, the Board makes the following Findings of Fact and Conclusion of Law:

FINDINGS OF FACT

1. Michael L. Elias, D.D.S., license number DI009682, is a licensed dentist in the State of New Jersey and has been a licensee during all times pertinent hereto.
2. The Order to Show Cause and Administrative Complaint in this matter were properly served upon respondent on May 12, 1997. Service was effected by an investigator of the Division of Consumer Affairs Enforcement Bureau who hand delivered the Order to Show Cause and Administrative Complaint to Dr. Elias. Dr. Elias acknowledged receipt of the Order to Show Cause and Administrative Complaint by signing a copy of the papers.²

²Due to a clerical error, the original set of papers served upon respondent was missing Page 2 in the Administrative Complaint.

3. Dr. Elias failed to file an answer, enter a plea or respond in any manner whatsoever to the Administrative Complaint filed herein.

4. A second complete set of papers were personally served upon respondent on May 20, 1997. Service was effected by an Investigator of the Division of Consumer Affairs Enforcement Bureau who hand delivered the Order to Show Cause and Administrative Complaint to Dr. Elias.³

5. Dr. Elias failed to appear at the hearing convened on May 21, 1997.

CONCLUSION OF LAW

1. Dr. Elias received sufficient notice of the charges against him and was afforded an opportunity to be heard on those charges.

2. Dr. Elias's failure to submit the dental records for patients J.R. and E.Y. in accordance with an administrative subpoena for patient records in violation of the duty established by N.J.A.C. 13:45C-1.2 and N.J.A.C. 13:45C-1.3(a) 1, 2, 4, and 6, constituting both professional misconduct in violation of N.J.S.A. 45:1-21(e) and a failure to comply with a Board directive in violation of N.J.S.A. 45:1-21(h).

3. Dr. Elias' failure to renew his current certificate of registration to practice dentistry by November 1, 1995, constitutes a violation of N.J.S.A. 45:6-10 and respondent has therefore violated or failed to comply with the provisions of an act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h).

³The second set of papers served included Page 2 of the Administrative Complaint.

It appearing that respondent, Mitchell L. Elias, D.D.S., has failed to file an answer to the charges set forth in the administrative complaint filed before this Board or to otherwise appear, and that respondent is, therefore, in default; and the Board finding that the facts as previously set forth herein constitute grounds for disciplinary action pursuant to N.J.S.A. 45:1-21(e) and (h); and it further appearing that the Board finds that the within Order is necessary to protect the public health, safety and welfare; and it further appearing that good cause exists for entry of the within Order,

IT IS on this 18th day of June, 1997,

ORDERED, that

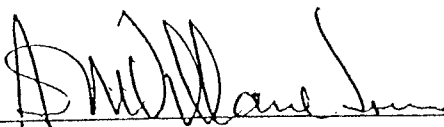
1. Default be and hereby is entered against respondent in the above captioned matter.
2. Respondent's license to practice dentistry in the State of New Jersey shall be and hereby is immediately suspended indefinitely. The Board may reconsider the suspension at such time as respondent appears before the Board in regards to his failure to comply with the March 24, 1997 administrative subpoena duces tecum. Within seven (7) days of respondent's receipt of the within Order, respondent shall submit his dentistry license together with CDS and DEA registrations to the Board of Dentistry, Attention: Agnes M. Clarke, Executive Director, at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101, or surrender such credentials to the Board's designee. During the period of active suspension, the respondent shall derive no financial remuneration directly or indirectly related to patient fees paid for dental services rendered by other licensees for patients of respondent's practice. Additionally, respondent shall comply with the Directives applicable to disciplined licensees, a copy of which is attached hereto.

3. Respondent is hereby assessed a civil penalty in the amount of \$4,000.00 (\$2,500.00 for failing to comply with the terms of the Board's administrative subpoena; and \$1,500 for failing to renew the certificate of registration for the biennial registration of 1995 - 1997). The civil penalty shall be submitted by certified check or money made payable to the State of New Jersey and submitted to the Board of Dentistry, Attention: Agnes M. Clarke, Executive Director, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07102 within thirty (30) days of receipt of the within Order.

4. Respondent shall forward to Agnes M. Clarke, Executive Director of the Board of Dentistry, at the address listed above, the sum of \$391.14, by certified check or money order made payable to the "State of New Jersey," within thirty (30) days of the date of the entry of this Order, which represents the costs of the investigation of this matter.

5. This Order shall be effective as of the announcement of the Board's decision in Public Session on May 21, 1997. Respondent shall be granted ten days from the date of service of the within order for leave to move for the dissolution and/or modification of the with Order.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 
Anthony M. Villane, Jr., D.D.S.
Board President

DIRECTIVE REGARDING FUTURE ACTIVITIES
OF BOARD LICENSEE WHO HAS BEEN SUSPENDED/
REVOKED AND USE OF THE PROFESSIONAL PREMISES

A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board shall conduct him/herself as follows.

- 1) Promptly deliver to the Board the original license and current biennial registration and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.
- 2) Desist and refrain from the practice of dentistry in any form either as principal or employee of another licensee.
- 3) Inform each patient at the time of any inquiry of the suspended or revoked or retired status of the licensee. When a new licensee is selected by a patient, the disciplined practitioner shall promptly make available the original or a complete copy of the existing patient record to the new licensee, or to the patient if no new licensee is selected. Such delivery of record does not waive any right of the disciplined practitioner to claim compensation earned for prior services lawfully rendered.
- 4) Not occupy, share or use office space in which another licensee practices dentistry.
- 5) Desist and refrain from furnishing professional dental services, giving an opinion as to the practice of dentistry or its application, or any advice with relation thereto; and from holding him/herself out to the public as being entitled to practice dentistry or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice dentistry. This prohibition includes refraining during the period of suspension or revocation from placement of any advertisement or professional listing in any advertising medium suggesting eligibility for practice or good standing.
- 6) Cease to use any stationery whereon such person's name appears as a dentist in practice. If the practitioner was formerly authorized to issue written prescriptions for medication or treatment, such prescription pads shall be destroyed if the license was revoked. If the license was suspended, the prescriptions shall be destroyed or shall be stored in a secure location to prevent theft or any use whatsoever until issuance of a Board Order authorizing use by the practitioner. Similarly, medications possessed for office use shall be lawfully disposed

of, transferred or safeguarded.

7) Not share in any fee for dental services performed by any other licensee following the suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf prior to the effective date of the suspension, revocation or surrender.

8) Use of the professional premises. The disciplined licensee may allow another licensee to use the office premises formerly occupied by the disciplined licensee on the following conditions only:

(a) The new licensee shall conduct the practice in every respect as his/her own practice including billings, claim forms, insurance provider numbers, telephone numbers, etc.

(b) The disciplined licensee may accept no portion of the fees for professional services rendered by the new licensee, whether by percentage of revenue, per capita patient, or by any other device or design, however denominated. The disciplined licensee may, however, contract for or accept payment from the new licensee for rent (not exceeding fair market value) of the premises and either dispose of or store the dental material and equipment, but in no event shall the disciplined licensee, on the basis of a lease or any other agreement for compensation place in the possession of any operator, assistant or other agent such dental material and equipment, except by a chattel mortgage.

(c) No use of name of disciplined licensee or personally owned office name or tax- or provider identification number.

1. Where the disciplined licensee was using an individual IRS number or where the licensee was the sole member of an incorporated professional association or a corporation, the disciplined licensee may contract to rent the office premises to a new practitioner. The new practitioner must use his/her own name and own provider number on all bills and insurance claim forms. Neither the name nor the number of the disciplined licensee may be used. When the license of a sole practitioner has been revoked, a trade name must be cancelled and a professional service corporation must be dissolved.

2. Where the disciplined licensee is a

member of a professional group which uses a group-type name such as the ABC Dental Group, the disciplined licensee must arrange to have his/her name deleted, covered up or otherwise obliterated on all office signs, advertisements published by the group after the effective date of the Board disciplinary Order and on all printed billings and stationery. The other group members may continue to function under the incorporated or trade name, minus the name of the disciplined licensee, and may continue to use its corporate or professional identification number.

(9) Report promptly to the Board compliance with each directive requiring moneys to be reimbursed to patients or to other persons or third party payors or to any court, and regarding supervisory reports or other special conditions of the Order.

(10) A practitioner whose license is surrendered, revoked or actively suspended for one year or more shall conduct him/herself as follows:

- 1) Promptly require the publishers of any professional directory and any other professional list in which such licensee's name is known by the disciplined licensee to appear, to remove any listing indicating that the practitioner is a licensee of the Board in good standing.

- 2) Promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.

(11) A practitioner whose practice privileges are affected by a Board disciplinary Order shall, within 90 days after the effective date of the Board Order, file with the Executive Director of the Board a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person. Any change in the residence, address or telephone number shall be promptly reported to the Executive Director.